

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MICHEL TOLIVER,

Plaintiff,

- against -

N.Y.C. DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

**MEMORANDUM
OPINION AND ORDER**

10 Civ. 0822 (RJS) (RLE)


RONALD L. ELLIS, United States Magistrate Judge

Pro Se Plaintiff Michael Toliver filed this case on February 3, 2010. On the same day, Chief Judge Preska granted Toliver's request to proceed *in forma pauperis*. On October 21, 2010, Defendants moved that this Court revoke Plaintiff Toliver's *in forma pauperis* status. On November 12, 2010, the Court ordered Toliver to show good cause why his *in forma pauperis* status should not be revoked. On December 21, 2010, following review of the cases cited in Defendants' motion, the Court denied Defendants' motion. Defendants now move for reconsideration. For the reasons below, Defendants' motion for reconsideration is **DENIED**.

The standard for a motion for reconsideration under Local Rule 6.3 and Federal Rule of Civil Procedure 59(e) is a strict one. *See Schrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). The moving party must be able to "point to controlling decisions or data that the court overlooked - matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Id.* A motion for reconsideration "is not a substitute for appeal," *Morales v. Quintiles Transnat'l Corp.*, 25 F. Supp. 2d 369, 372 (S.D.N.Y.1998), and is generally only granted on three grounds: "(1) an intervening change of controlling law, (2) the availability of new evidence, or (3) the need to correct a clear error or prevent manifest injustice." *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir.1992).

Defendants do not cite any new cases or new facts in support of their motion for reconsideration. Rather, they continue to press their interpretation of the previous cases as strikes, and their view that Toliver has abused his *in forma pauperis* status. Because Defendants have not met the standard for reconsideration, their motion for reconsideration is **DENIED**. Defendants are hereby **ORDERED** to file their response to Toliver's pending motion for sanctions by **January 21, 2011**. Toliver **SHALL** file his reply to Defendants' response by **February 7, 2011**.

SO ORDERED this 7th day of January 2011
New York, New York



The Honorable Ronald L. Ellis
United States Magistrate Judge